

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SUSAN M HARRIS

Claimant

APPEAL NO: 07A-UCFE-00005-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE

Employer

**OC: 01/07/07 R: 01
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(9) – Suspension or disciplinary layoff

STATEMENT OF THE CASE:

Susan M Harris (claimant) appealed a representative's February 5, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a suspension from employment from United States Postal Service (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 26, 2007. The claimant participated in the hearing. Daryle Zwiefel appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged or suspended for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 4, 1996. She worked between 32 and 44 hours per week as a part-time flex clerk in the employer's Humboldt, Iowa post office. Her last day of work was January 5, 2007. The employer suspended her pending investigation on that date. The reason asserted for the suspension was making an improper cash advance to herself.

The claimant had been having some personal cash flow problems due to a garnishment against her wages and some late support payments from her ex-husband. On or about December 28, 2006 the claimant was notified by her bank that her account was overdrawn approximately \$1,000.00. Her next payday was the next day, December 29, but she calculated she would only receive a net pay of about \$500.00 that she could use against the bank deficit. Therefore, on December 28 she issued herself a money order in the amount of \$500.00 which she posted on the books as a pay advance.

The employer's policies prohibit an employee from taking something of value for themselves from the employer. The policies also specify that when a money order is sold to a customer, the transaction cannot be made by check or credit, but rather must be paid for in actual currency.

The claimant did not pay for the money order in any way. The postmaster, Mr. Zwiefel, had on a few isolated occasions issued a money order to an employee as a pay advance where the employee's paycheck was short the number of hours that should have been paid, but this also did not apply to the claimant's situation. Under no circumstances did the employer's policy provide for a cash advance against upcoming paychecks, or for an employee to issue a pay advance to themselves.

Mr. Zwiefel first observed the pay advance irregularity in the employer's offset book on January 3, 2007. He assumed he must have made a mistake and had forgotten doing so. In passing he made a comment to the claimant; she responded that she had needed the money. As a result of detecting the irregularity, Mr. Zwiefel reported it to his supervisor, and an audit by an inspector general was scheduled. The audit occurred on January 5. Prior to the audit, on January 4 the claimant had self-processed another transaction in which she paid for the original money order by presenting a check in payment. The claimant did not attempt to conceal her transactions and when approached about the transactions after the audit on January 5 readily admitted what she had done. She asserted that she had always had the intent to repay the advance, that had she not intended to repay it, she would not have left the clear documentation of her transaction as she did.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to temporarily or permanently terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying suspension or termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The reason cited by the employer for suspending the claimant is her issuance of the money order cash advance to herself. While the claimant may have had an internal belief that she was going to repay the money soon and that she was doing nothing inappropriate, the claimant had no valid basis for her belief that this was not wrong. As negligence, this is more than simple, ordinary negligence; rather, her actions show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer suspended the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's February 5, 2007 decision (reference 01) is affirmed. The employer suspended the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of January 5, 2007. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs